

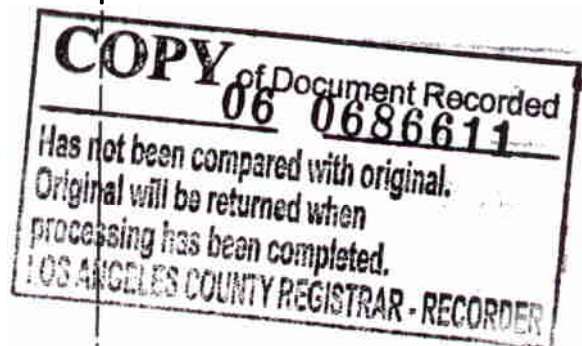
MAR 30 2008

RECORDING REQUESTED BY:

Los Angeles County Metropolitan
Transportation Authority
One Gateway Plaza
Los Angeles, California 90012

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 3
1011 N. Grandview Avenue
Glendale, California 91201
Attention: Sayareh Amir, Chief
Southern California Cleanup Operations
Branch



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Former Macy Street Site, 710 Keller Street, Los Angeles, California, Assessor's
Parcel Number 5409-021-902)

This Covenant and Agreement ("Covenant") is made by and between the Los Angeles County Metropolitan Transportation Authority (the "MTA" or "Covenantor"), the current owner of property situated in Los Angeles, County of Los Angeles, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 2 acres, is more particularly described and depicted in Exhibit "A," attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Keller Street on the northwest, the Los Angeles River on the southeast, Cesar E. Chavez Avenue (formerly Macy Street) on the northeast, and the Covenantor's bus overpass on the southwest. The Property is more specifically described as Los Angeles County Assessor's Parcel No.: 5409-021-902. The Property was owned from approximately 1897 to 1992 by The Atchison, Topeka and Santa Fe Railway Company (ATSF). The Burlington Northern and Santa Fe Railway Company (BNSF) is the corporate successor to ATSF. BNSF, the prior property owner, sold the Site to MTA's predecessor, the Los Angeles County Transportation Commission in 1992. The Southern California Gas Company (TGC) was involved in the soil remediation activities at the Former Macy Site. A predecessor company of TGC formerly leased a portion of the property from at least 1894 to at least 1906. TGC has also been performing quarterly ground water monitoring at the existing wells TRC-MW-3 and TRC-MW-5 present on the Site as a part of its regional ground water monitoring program for the Former Aliso Street Manufactured Gas Plant Sites. Although the Former Macy Street Site is not included as part of the Former Aliso Street MGP Site, it is adjacent to and hydraulically downgradient of Sector B of that site.

1.02. The Property has been remediated pursuant to a Removal Action Workplan (RAW) approved under Chapter 6.8 of Division 20 of the Health and Safety Code and implemented under the oversight of the Department. The RAW provides that a deed restriction be required as part of the site remediation, because polycyclic aromatic hydrocarbons (PAHs), which are hazardous substances as defined in Health and Safety

Code section 25316, and a hazardous material, as defined in Health and Safety Code section 25260, remain in the soil in and under portions of the Property at depths of 10 feet or more below the surface of the Property. The Department circulated the RAW, which contains a summary of the Final Human Health Risk Assessment, together with a draft negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The RAW and the negative declaration were approved by the Department on February 4, 2003, pursuant to which the Property was excavated to a maximum depth of 10 feet, graded, and then backfilled with clean soil.

The response action also includes the installation and monitoring of two groundwater monitoring wells ("Monitoring Wells") which are identified as MW-3 and MW-5. The locations of the Monitoring Wells are shown on Exhibit "B," attached hereto and incorporated herein by this reference. The Monitoring Wells were sampled by TGC on a quarterly basis for one year, beginning on March 8, 2004, to evaluate groundwater conditions and the need for groundwater remediation, if any. TGC submitted the results of the groundwater monitoring to the Department. TGC will continue monitoring these two wells MW-3 and MW-5 as part of its regional groundwater monitoring program for the Former Aliso Street Manufactured Gas Plant Sites. If the Department determines that groundwater remediation is necessary, TGC and BNSF will prepare a groundwater remedial action plan for the Department's review and approval. This Covenant does not address groundwater remediation or groundwater operation and maintenance on the Property.

1.03. As detailed in the Final Human Health Risk Assessment as approved by the Department on February 5, 2002, a portion of the subsurface soils below 10 feet of the surface of the Property contain hazardous substances, as defined in Health and Safety Code section 25316, which include total PAHs at a maximum measured concentration of 333 milligrams per kilogram (mg/kg). In addition, Total Recoverable Petroleum Hydrocarbons (TRPH) are present at a maximum measured concentration of 26,100 mg/kg.

Based on the Final Human Health Risk Assessment, the Department concluded that

use of the Property as a residence, a hospital, a school for persons under the age of 21 or a day care center would entail an unacceptable cancer risk. In its letter dated June 30, 2004 approving the Removal Action Completion Report, the Department concluded that a land use covenant prohibiting certain uses should be prepared for the Property because contamination remains in deeper soils at the Site.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the

Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by Health and Safety Code section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering this Covenant. The terms of this Covenant run with the land and will continue in perpetuity unless a variance is granted pursuant to section 6.01, or unless terminated pursuant to section 6.02. The Department has already incurred and will in the future incur costs associated with administering this Covenant, as estimated in Exhibit C-1. BNSF has agreed to make an advance payment of \$ 40,020.00 (Exhibit C-2) to the Department for these estimated future costs. If the Department's costs of administering this Covenant exceed the amount of

the advance payment, BNSF will be responsible for the Department's additional costs in administering this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil at or below 10 feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, or trenching shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property more than 10 feet below the soil surface.

4.03. Prohibited Activities. Extraction of groundwater for purposes other than site monitoring, site remediation or construction dewatering shall not be conducted at the Property.

4.04. Non-Interference with Groundwater Monitoring Wells on the Property.

Covenantor agrees:

(a) Activities that may disturb the Monitoring Wells (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and approval by DTSC.

(b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Monitoring Wells.

(c) The Monitoring Wells shall not be altered without prior written approval by DTSC.

(d) Covenantor shall notify DTSC of the type, cause, location and date of any damage to the Monitoring Wells, if known. Notification to DTSC shall be made as provided below within ten (10) working days of discovery of any such disturbance. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants for the particular incident/damage reported.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Annual Report. One year from the effective date of this Covenant, and annually thereafter, Owner(s) or their agents(s) shall submit an Annual Status Report to the Department certifying whether the Owner is in compliance with the use restrictions specified in Sections 4.01, 4.02, 4.03 and 4.04 of this covenant. An Annual Status Report Form is attached as Exhibit D. The Owner(s) shall submit the Annual Status Report by the 15th day of the anniversary month to: Sayareh Amir, Department of Toxic Substances Control, Southern California Cleanup Operations Branch, Glendale Office, or her successor. The requirement to submit an Annual Status Report shall continue in effect during the term of this Covenant and may not be terminated except in accordance with Section 6.02. The requirement to submit an Annual Status Report

applies to the Owner at any time the Owner holds title to all or any portion of the Property.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Director of Real Estate

Los Angeles County Metropolitan Transportation
Authority

One Gateway Plaza

Los Angeles, California 90012

To Department: Southern California Cleanup Operations - Branch Chief

Department of Toxic Substances Control

1011 N. Grandview Avenue

Glendale, California 91201

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Los Angeles County Metropolitan Transportation Authority

By: Velma C. Marshall

Title: Velma C. Marshall
Director of Real Estate

Date: 3/10/06

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
COUNTY COUNSEL

By: Ronald W. Stamm
Deputy

Department of Toxic Substances Control

By: Sayareh Amir

Title: Sayareh Amir (ebrahimi)
Chief, Southern California Cleanup Operations
Branch – Glendale Office

Date: 3/21/06

STATE OF CALIFORNIA)

COUNTY OF)

Los Angeles)

On this 10th day of March, in the year 2006,

before me ANGELINA M. BELL, Notary Public, personally appeared

VELMA C. MARSHALL

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Angelina M. Bell



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles
On 21st March 2006 before me, TONY KALOGLHIAN
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared SAYAREH AMIREBRAHIMI
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Tony Kaloghlian
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ENVIRONMENTAL RESTRICTION
Document Date: March 10, 2006 Number of Pages: Twelve

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☒ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

LIST OF EXHIBITS

Exhibit A – Legal Description of Property _____

Exhibit B – Locations of Monitoring Wells

Exhibit C -- C-1, Cost Estimate for Administering the Covenant
C-2, Advance Payment

Exhibit D – Annual Status Report Form

Exhibit A

LEGAL DESCRIPTION
(Macy/Keller Property)

LOTS 2,4,6,8,10,12,14,16,18,20,22,24,26,28,30,32, AND 34 IN BLOCK "A" OF THE ALISO TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 4, PAGE 12 OF MISCELLANEOUS RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND LYING SOUTHEASTERLY OF A LINE THAT IS PARALLEL WITH AND DISTANT 60 FEET NORTHWESTERLY MEASURED AT RIGHT ANGLES TO AND CONCENTRIC WITH THE WESTERLY LINE OF THE 300-FOOT IN WIDTH LOS ANGELES RIVER CHANNEL RIGHT OF WAY, PER BOOK 876, PAGE 131 OF DEEDS AND BOOK 876 OF DEEDS, BOTH DEEDS OF SAID COUNTY.

TtB-5 ▲

CESAR E. CHAVEZ AVENUE
(FORMER MACY STREET)
OVERPASS

▲ TtB-3

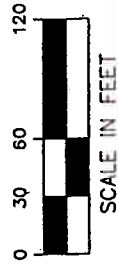
KELLER STREET

FORMER MACY STREET SITE

▲ MW-3

▲ MW-5

LA RIVER



▲ MW-3 Groundwater Monitoring Well

EXHIBIT B
MONITORING WELL LOCATIONS

FORMER MACY STREET SITE
THE BNSF RAILWAY COMPANY

URS
Project No.
24554344
TA-2005-BNSF-BNSF-Passby.dwg | FIGURE B

Exhibit C
DTSC's OVERSIGHT COST ESTIMATE FOR ADMINISTERING
INSTITUTIONAL CONTROLS WITH ANNUAL STATUS REPORT
Former Macy Street Site, Los Angeles, California

As a part of its regulatory oversight role, the Department of Toxic Substances Control (DTSC) will conduct yearly activities to verify that ICs are functioning properly and successfully. If the owner inspects and submits an Annual Status Report verifying compliance with the land use restrictions, these activities are expected to include:

- Random inspections every three to five years.
- Pertinent phone calls or meetings with entities associated with the site, including the landowners, tenants, and other regulatory agencies.
- Review and response to correspondence from the landowner pertaining to the IC's.
- Handling of internal or external inquiries about the existing IC's.

DTSC's estimated annual costs for performing the above activities are:

	Branch Chief	Supervisor	Project Manager	Technical Support	Clerical	Grand Total Cost
Total No. Hours	1/yr	1/yr	6/yr	2/yr	1/yr	-
Hourly Cost (\$)	155	135	117	142	58	-
Total Cost (\$)	155.00	135.00	702.00	284.00	58.00	1,334.00

The above costs assume that no IC failures or breaches are noted during the inspection or otherwise reported to DTSC. If such problems arise as a result of negligence, non-compliance, or natural disasters such as earthquakes and floods, DTSC may incur the following costs in a single year:

	Branch Chief	Supervisor	Project Manager	Technical Support	Clerical	Attorney	Grand Total Cost
Total No. Hours	1/yr	2/yr	8/yr	6/yr	4/yr	2/yr	-
Hourly Cost (\$)	155	135	117	142	58	162	-
Total Cost (\$)	155.00	270.00	936.00	852.00	232.00	324.00	2,769.00

The costs assume that DTSC will conduct the following actions:

- All of the activities described previously.
- Work related to discoveries of IC violations, breaches, or disruptions, including preparing associated documentation, discussions with the landowner or regulatory agency personnel and supervisor; preparation of associated internal and external correspondence, documenting that problems have been corrected.
- Work related to potential IC disruptions that are outside of the control of the landowner, including acts of nature (flood, earthquake), vandalism, or violence. The time would include the site inspection, preparing associated documentation, discussions with the landowner, regulatory agency personnel and supervisor; preparations of associated internal and external correspondence, documenting that problems have been corrected.

The above estimates are based on **the Contract Estimate Rates effective July 7, 2005** and include labor rates and overhead. The estimates do not include:

- Renegotiation or termination of IC, associated agreements, or the RAP.
- Revisions of the IC due to changes of land use.
- Discussions with local land use agencies, prospective purchasers, or developers about changing the land use at any of the sites.

Exhibit C-1: DTSC OVERSIGHT COST ESTIMATE

LAND USE COVENANT AGREEMENT: Former Macy Street Site

Project Name: FORMER MACY STREET SITE

CalStars Site Code: 300568-11

Title	Branch Chief	Project Manager	Supervisor	Toxicology	Geology	Industrial Hygiene	HQ Engring	Public Particip	HQ CEQA	Legal	Clerical
Classification	Sr. ISS	ISS	ISS	ISS	ISS	ISS	ISS	ISS	ISS	ISS	ISS
TASKS:											
Agreement Preparation											
Review and comment on EPA Workplan and EPA Report: General Project Overview											
Scoping documents: HSP/RA/RA/RA											
Remedial Investigation/ Feasibility Study (RIFS)											
- Workplan											
- Implementation											
- Report											
Risk Assessment											
Public Participation											
CEQA											
Removal Action Workplan											
Remedial Action Plan (RAP)											
Remedial Design (RD)											
Implement RAW											
Completion Report											
Certification											
Deed Restriction											
Operation & Maint											
Total No. Hours/year	1	6		1		2					1
Hourly Rate	155	117		135		142					58
Total Cost	155	702		135		284					58
Total Cost/year	\$1,334										
Cost for 30 year	40,020										
Grand Total Cost for 30 year	\$40,020										

Exhibit C-2

DTSC OVERSIGHT COST ESTIMATE
LAND USE COVENANT AGREEMENT: Former Macy Street Site
30 YEAR FIXED LUMP SUM ADVANCED PAYMENT

Annual Cost	30 Year	Total Amount
\$1,334.00	30	\$40,020

Exhibit D

Annual Status Report For Covenant to Restrict Use of Property
Former Macy Street Site (710 Keller Street, Los Angeles, CA)

Name of Person Completing Form:

Address:

Phone number:

Date:

How was status verified?

- | | YES | NO |
|---|-----|----|
| 1. Is there a residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation on the property? | | |
| 2. Is there a hospital for humans on the property? | | |
| 3. Is there a public or private school for persons under 21 years of age on the property? | | |
| 4. Is there a day care center for children on the property? | | |
| 5. Is there evidence of disturbance of soil at or below 10 feet below grade surface? [If disturbance of soil was noted on the property explain in detail on attached pages the purpose of the disturbance, when it was performed, and who at the Department approved the Soil Management Plan.] | | |
| 6. Was extraction of groundwater for purposes other than | | |

Exhibit D

Annual Status Report For Covenant to Restrict Use of Property

Former Macy Street Site (710 Keller Street, Los Angeles, CA)

site monitoring, site remediation or construction dewatering conducted at the Property? Was there any interference with or disturbance of the Monitoring Wells on the Property?

7. Did you fail to use due diligence and make an inquiry as to each and every restriction noted in the Covenant or listed on this annual status report form?
8. Has there been any change in the restrictions under a variance, modification or termination as approved by the Department under the Health and Safety Code? [If yes, describe in detail the change and the date of such approval for that change.]
9. Have there been any violations of the Covenant? [If yes, describe in detail on an attached page the steps taken to return to compliance.]
10. Is the following a true and accurate statement?

Statement: The undersigned is the Owner of Property subject to this Covenant, and hereby admits that such Property has been used for one or more of the purposes listed in Sections 4.01, 4.02, 4.03 and 4.04 of this Covenant during the past year.

Please explain each YES response in detail on attached pages.

I certify that the foregoing information is true and correct to the best of my knowledge. I understand that a person making a false statement or representation in this report may be subject to fine or imprisonment or both.

Signed: _____

DATE: _____

Representative of owner of the Former BNSF Macy Street site property,
710 Keller Street, Los Angeles, California.